

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

INTERIM APPLICATION NO. 5219 OF 2022
IN
TESTAMENTARY PETITION NO. 2922 OF 2019

Wenceslaus Gabriel Perira

...Deceased

Marian Rose Fernando

...Applicant/Petitioner

Adv. Karen Koya i/b. Denzil D'Mello for the Applicant/Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 31st JANUARY, 2023

P.C. :

1. The present Interim Application has been filed seeking dispensation with the objections raised by the Testamentary Registrar vide order dated 25th November, 2021 which read thus:

"1. The Learned Advocate for the Petitioner is directed to comply the following objections.

i. Annex I.D. proof of the deceased, exhibit the same and make necessary averment in Para-1, of the petition.

ii. Annex documentary proof of Surety of Administration Bond.

iii. Administration Bond Expired in July-2020, Advocate to explain.

iv. Mention the exact capacity of Petitioner.

v. Correct verification clause.

vi. Obtain direction of the court for acceptance of affidavit dated 06.02.2021 (Attesting Witness) filed by the Petitioner.

2. As and when the objections are complied, office to verify the same and Advocate for the Petitioner to file a Praecipe for placing the matter on Board for final order."

2. Learned counsel appearing for the Applicant submits that the deceased passed away on 31st October 1987, and despite due and diligent search no I. D. proof of the deceased could be found. She submits therein so far as the next objection i.e. Administration Bond is concerned the same shall be complied with forthwith if the Court so directs. Learned Counsel however, submitted that since, the Applicant is the sole legal heir and beneficiary under the said will. The need to file such Administration Bond may be dispensed with.

3. In so far as the next objection, she submits that both the attesting witnesses have passed away. She submits that the affidavit of the Applicant purely due execution of the Will has already been filed. In light of this, she submits that a direction be given that the same be taken on record.

4. I have heard learned Counsel and perused the copy of the Interim Application and the objections raised. I find that the Learned Counsel has made out a case for seeking dispensation with the objections raised. Despite due and diligent search for the Photo I. D. of the deceased cannot be found. The same

cannot be a ground to deny the Applicant the grant of Letters of Administration. Therefore, the said objection is accordingly dispensed with. In so far as the next objections of furnish of Administration Bond is concerned, given the fact that there are no contesting legal heirs in the present case, the requirement of filing such Administration Bond is dispensed with. Also given that both the attesting witnesses namely A. Fonseca alias Anthony and Mr. J. F. Saldanha alias Jerome Saldanha have passed away. The question of filing of their Affidavits does not arise. In view thereof the office to accept the Affidavit filed by the Applicant which proves due execution of the will of the deceased. In view of the above, Interim Application is allowed in terms of prayer clause (a) (b) (c) and (d) which reads thus:

“(a) That this Hon’ble Court may be pleased to dispense with the requirement to annex the Photo Identity Proof of the Deceased in the above Petition and dispense with the objection raised by the Testamentary department at serial No. 1(i) of order dated 25/11/2021.

(b) That this Hon’ble Court may be pleased to allow the Petitioner/ Advocate for the Petitioner to carry out amendment by extending the date mentioned in the administration Bond for a period of six months from the date of the order passed by this Hon’ble Court, to comply with the objection raised by the Testamentary department at serial No. 1(iii) of the order dated 25/11/2021

(c) That this Hon’ble Court may be pleased to accept the Affidavit dated 6/2/2021 filed by the Petitioner, to comply with the objection mentioned at serial No. 1(vi) of the order dated 25/11/2021;

(d) That this Hon’ble court may be pleased to direct the Testamentary Department to proceed further for the issuance of Grant after the compliance of all the objections;”

5. Interim Application is according disposed off.
6. Refund Court fee, if any, as per Rules.

(ARIF S. DOCTOR, J)